

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
HARDY TELECOMMUNICATIONS, INC.)	
)	CC Docket No. 96-45
Petition for Waiver of the Sections)	
54.307(c)(2) and 54.802(a) Applicable to)	
the Line Count Submission for High Cost)	
Loop and Interstate Access Support)	

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER

Hardy Telecommunications, Inc. ("Hardy" or the "Company"), pursuant to Section 1.3 of the Rules of the Federal Communications Commission (the "Commission" or the "FCC"),¹ hereby requests a waiver of the end of September line count filing deadline found in Sections 54.307(c)(2) and 54.802(a).² This waiver is required in order for the Universal Service Administrative Company ("USAC") to accept the Company's September 4, 2007 Form 525 line count submission that will, in turn, permit Hardy to receive uninterrupted High Cost Loop

¹ See 47 C.F.R. § 1.3.

² See 47 C.F.R. § 54.307(c)(2) ("A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule. (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;"). Section 54.802(a) states, in part, as follows:

Each Eligible Telecommunications Carrier that is providing service within an area served by a price cap local exchange carrier shall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each price cap local exchange carrier study area disaggregated by UNE Zone if UNE Zones have been established within that study area, showing residential/single-line business and multi-line business line counts separately. . . .

47 C.F.R. § 54.802(a).

support (“HCL”) for the first quarter 2008 and Interstate Access Support (“IAS”) for the entire July 1, 2007 through June 30, 2008 period. Hardy respectfully submits that good cause exists for a grant of this waiver. As explained herein, the missed end of September, 2007 line count submission deadline arose solely as a result of an inadvertent error in the e-mail address used for the submission by the Company of its FCC Form 525 line count filing that went undiscovered until late in November. This inadvertent error should not, in Hardy’s view, preclude it from receiving proper federal Universal Service Fund (“USF”) disbursements for which it would otherwise be eligible.

Thus, a grant of this request would ensure that Hardy receives proper levels of HCL and IAS disbursements, a result that is consistent with the underlying reasoning for disbursement of federal USF to entities in the first instance – the provision, maintenance and upgrading of facilities and services for which that USF is intended.³ Moreover, the Company understands that no contributing party would be harmed by this filing as Hardy’s forecasted HCL and IAS disbursements have been included by USAC for federal USF sizing purposes. Accordingly, for the reasons stated herein, a grant of the Company’s request for waiver of the end of September, 2007 line count filing deadline that directs USAC to accept the Company’s September 4, 2007 line count submission – the date that the Company attempted to submit the information electronically to USAC -- will serve the public interest.

I. BACKGROUND

Hardy operates as a Competitive Eligible Telecommunications Carrier (“CETC”) operating in rural portions of northwestern West Virginia surrounding the Town of Moorefield,

³ See 47 U.S.C. § 254(e).

West Virginia.⁴ The Company's USAC Service Provider ID is 143028655, and its Study Area Code is 209009.⁵

As of June 30, 2007, Hardy provides its CETC-based wireline service to over 1,200 access lines in its rural service areas of Hardy County. Hardy has already made substantial investment in facilities to provide competitive wireline services to the Town of Moorefield and its surrounding area, and has specific investment plans for year 2007-2008 which were made with the understanding of what generally could be anticipated as its receipts of the federal Universal Service Fund ("USF") to which it is entitled.

As USAC's records will reflect, the Company has been receiving federal USF based on its designation as a CETC on August 27, 2004 by the West Virginia Public Service Commission ("WVa PSC") in Case No. 03-0305-T-PC. In fact, and by way of example, on June 22, 2007, Hardy filed its annual IAS certification to USAC. *See* Attachment B. Similarly, Hardy made the necessary July 31, 2007 line count submission. Moreover, as the USAC's record confirms, Hardy has been certified by the WVa PSC to receive HCL for the full calendar year 2008. *See* Attachment C. Thus, but for the unanticipated circumstance noted below regarding its September 30th line count information, Hardy is otherwise eligible to receive HCL for the first quarter 2008 and IAS disbursements for the entire year period from July 1, 2007 through June 30, 2008.

⁴ Attached hereto are the declarations of Mary G. Mongold, General Manager of Hardy. *See* Attachment A.

⁵ Hardy is both an Incumbent Local Exchange Carrier ("ILEC") and a Competitive Local Exchange Carrier ("CLEC"). Hardy's CLEC operations are provided under a separate operating division and it is through this separate operating division that Hardy received its CETC designation for the area that includes Moorefield, West Virginia. Hardy's ILEC operations are not affected by or included in this waiver.

Recognizing the upcoming end of September 2007 Form 525 line count filing deadline, Ms. Mongold, General Manager of Hardy, made the line count submission on September 4, 2007 since she had many scheduled events during the month of September. In doing so, Ms. Mongold believed that the submission was proper, complete and accurate. At no time was Ms. Mongold aware of any “bounce back” of her email as not being received by USAC, and, due to then current work deadlines and upcoming work-related commitments, she inadvertently overlooked the fact that no email confirmation regarding the September 4th submission had been received from USAC. Thus, and in good faith, the Company believed that its September 4th line count filing would be sufficient to continue its federal USF disbursements uninterrupted.

However, with the receipt of USAC High Cost Remittance Statement in late November, 2007 reflecting the lack of IAS recovery for the month of October, the Company contacted USAC and, as a result of exchanges of emails, first learned of its mistake with respect to the email address that Ms. Mongold had used to send the September 4th filing. Specifically, rather than sending the email to HCLfilings@hcli.universalservice.org, Ms. Mongold had inadvertently inserted a “.” (period) between “universal” and “service” in the address, thus using HCLfilings@hcli.universal.service.org as the email address for the September 4th submission. Upon learning of this error and evaluating the full impact of the error, the Company promptly sought advice of counsel and now files this waiver as USAC had indicated that the Company’s first quarter 2008 HCL and IAS disbursements for the fourth quarter 2007 will not be forthcoming. These federal USF disbursements are estimated to be approximately \$34,500.00.

II. A GRANT OF THIS PETITION SERVES THE PUBLIC INTEREST

Pursuant to Section 1.3 of the Commission's Rules, the Commission may grant a waiver of the application of any of its rules for "good cause shown."⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸ Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and if such deviation will serve the public interest.

Hardy respectfully submits that these factors apply to the circumstances confronting it and the effect that will be experienced absent an expedited grant of this request. As the facts demonstrate, Hardy was not negligent or careless with respect to its need to make timely filings nor was the Company forgetful of its obligation to make the end of September 2007 line count filing. Rather, the only error, inadvertent to say the least, was the inclusion within the email address of an errant "period." The Company made the filing a full eighteen (18) business days before the end of the September. If the error in the email address had been noted, there was more than sufficient time to correct the email address and make the resubmission, particularly since the substance of the September line count submission was already completed.

Once the error was noticed with the receipt by the Company of its November, 2007 USAC disbursement summary, however, Ms. Mongold investigated the reduction in federal USF

⁶ 47 C.F.R. §1.3.

⁷ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

levels, sought input from USAC, and proceeded with diligence to file this waiver request with the FCC after the impact of the error was fully evaluated and understood. To avoid similar situations, the Company has now changed its practice so that, beginning in 2008,⁹ and in lieu of the General Manager filing these reports, the Company's controller will do so and will report to the General Manager regarding the status and successful completion of the submissions in advance of the specific federal USF-related filing deadlines.

In light of the inadvertent error surrounding the email address that was used, coupled with the remedial measures that Hardy will now take, waiver of the end of September 2007 deadlines contained in Section 54.307(c)(2) and in Section 54.802(a) and acceptance of Hardy's September 4, 2007 line count submission as if filed by the end of September 2007 would serve the public interest. Hardy understands very well the importance of timely data submissions by entities like it. While the Company fully accepts the responsibility for the inadvertent error it has made resulting in the late receipt of the end of September line count submission, strict application of this line count submission deadline would be contrary to the public interest as it would impact the utilization of the anticipated distribution from the USF that the Company had planned. Under these circumstances, Hardy respectfully submits that the waiver of Section 54.307(c)(2) and of Section 54.802(a) is reasonable and in the public interest. Moreover, Hardy also respectfully requests that the waiver be granted promptly. Absent such waiver, the purpose of the federal USF disbursements that a CETC like Hardy can expect to receive – the “provision, maintenance and upgrading of facilities and services for which the support is intended”¹⁰ – would be

⁹ The Company made its end of December, 2007 FCC Form 525 line count submission on December 12, 2007.

¹⁰ 47 U.S.C. § 254(e).

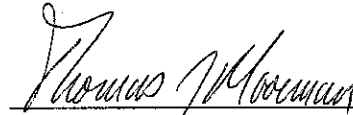
frustrated. Moreover, the Company understands that no contributing party would be harmed by this filing as Hardy's forecasted HCL and IAS disbursements have been included by USAC for sizing purposes. Thus, there should be no significant impact on contributor obligations regarding the fund.

Accordingly, Hardy respectfully requests that the Commission grant this request and direct USAC to accept the Company's September 4, 2007 line count submission as if filed by the end of the September 2007 as required by Sections 54.307(c)(2) and 54.802(a) of the Commission's Rules.

Respectfully submitted,

Hardy Telecommunications, Inc.

By:



Thomas J. Moorman
Woods & Aitken LLP
2154 Wisconsin Ave, N.W. Suite 200
Washington, D.C. 20007
Tel. (202) 944-9500
Fax (202) 944-9501

Its Attorney

December 26, 2007

ATTACHMENT A

DECLARATION

I, Mary G. Mongold, General Manager of Hardy Telecommunications, Inc. (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver" and the factual information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.

Mary G. Mongold

Date: 12/26/07

Mary G. Mongold
General Manager

ATTACHMENT B

Interstate Access Support (IAS)
2007 - 2008

Date 12-Jun-07

To: Marlene H. Dortch
Office of Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Karen Majcher
Vice President - High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

Re: CC Docket No. 96-45
Interstate Access Support - IAS
Annual Certification Filing

RECEIVED

JUN 22 2007

USAC
Signature [Signature]

This is to certify that Hardy Telecommunications, Inc.
will use its **INTERSTATE ACCESS SUPPORT - IAS** only for the provision, maintenance
and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of the company named above. This certification is for the
study area(s) listed below. (Please enter your Company Name, State and Study Area Code)

IAS

Your Company Name	State	Your Study Area Code
Hardy Telecommunications, Inc.	West Virginia	209009

(If necessary, attach a separate list of additional study areas and check this box.) ☐

Signed,

Mary G. Mongold
[Signature of Authorized Representative]

Date: 12-Jun-07

Mary G. Mongold
[Printed Name of Authorized Representative]

General Manager
[Title of Authorized Representative]

Carrier's Name: **Hardy Telecommunications, Inc.**
Carrier's Address: **2255 Kimseys Run Road, Lost River, WV 26810**
Carrier's Telephone Number: **304-897-9911**

Date Received
(For official use only)

USAC

ATTACHMENT C

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 26th day of September, 2007.

CASE NO. 07-1387-T-GI

**GENERAL INVESTIGATION
REGARDING CERTIFICATION OF
FEDERAL UNIVERSAL SERVICE
FUNDING FOR ELIGIBLE
TELECOMMUNICATIONS CARRIERS
IN WEST VIRGINIA.**

General investigation into the certification of federal universal service funding for eligible telecommunications carriers in West Virginia.

COMMISSION ORDER

By this Order, the Commission finds that eligible telecommunications carriers in West Virginia are appropriately using federal universal service funds (USFs) and that rates in rural areas served by non-rural incumbent carriers are comparable to rates charged in urban areas nationwide.

Background

In its July 26, 2007 Order promulgating this general investigation the Commission noted that the Federal Communications Commission (FCC) requires states to file a certificate stating that all federal high-cost funds flowing to non-rural carriers and rural carriers in that state will be used consistent with Section 254(e) of the Telecommunications Act of 1934 (as amended). *See* 47 U.S.C. 254(e); 47 C.F.R. §§ 54.313 and 54.314. These filings must be made on an annual basis in order for the states to certify which carriers are eligible for USFs. Further, pursuant to 47 C.F.R. § 54.313(c), if the state commissions file a certification with the FCC prior to October 1, then USFs for the next calendar year will be forwarded to non-rural carriers; however, if they are not filed by October 1, then the number of calendar quarters for which non-rural carriers receive funding is reduced. This filing is also required of rural carriers, pursuant to 47 C.F.R. § 54.314.

Pursuant to *West Virginia Code* § 24-1-1(f)(2) and Rule 6.3. of the *Rules of Practice and Procedure*, the Commission initiated this general investigation (GI) regarding the certification of federal universal service funding for eligible telecommunications carriers (ETCs) in West Virginia, for calendar year 2008. The GI was opened to determine whether ETCs are in compliance with Section 254(e)¹ of the Telecommunications Act of 1934 (as amended).

The July 26, 2007 Order further noted the FCC's release of a Report and Order on March 17, 2005 that addressed, in part, annual certification and reporting requirements ("Report and Order").² In the Report and Order, the FCC strengthened its reporting requirements for ETCs to ensure that high-cost universal service support continues to be used for its intended purposes. The FCC's new requirements, as well as the FCC's statement of need for the additional requirements, were set forth in this Commission's July 26, 2007 Order. The FCC further encouraged state commissions to adopt the same annual reporting requirements, to be applicable to all ETCs, not just competitive ETCs. Report and Order at ¶ 71. The FCC also recognized that state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state. Report and Order at ¶ 72.

This Commission's May 17, 2005 Order, initiating the annual general investigation in Case No. 05-0714-T-GI, adopted the FCC's annual reporting requirements in addition to the reporting requirements required in previous years, including the requirement that all ETCs must file verified statements that they use universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

Pursuant to 47 C.F.R. § 54.316, each state must annually review the comparability of residential rates in rural areas served by *non-rural incumbent* local exchange carriers to urban rates nationwide, and certify to the FCC and Universal Service Administrative Company (USAC) whether the rates are reasonably comparable (a rate comparability certification). Verizon West Virginia Inc. (Verizon WV) is the only non-rural incumbent local exchange carrier in West Virginia. Thus, only ETCs serving such non-rural service areas are required to make rate comparability certifications. For purposes of making this determination, the carriers were required to file with this Commission the following information:

¹ This section states that federal USFs received by ETCs must be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 05-46 (Rel. March 17, 2005).

1. Monthly line charge
2. Monthly usage charges (an average may be used)
3. Any federal subscriber line charge
4. Any federal universal service credit
5. Any federal universal service surcharge
6. Any local number portability surcharge
7. Any telecommunications relay service surcharge
8. Any E-911 surcharge
9. Federal excise tax

Filings of the information as set forth above were ordered to be submitted in accordance with the following schedule:

<u>Filing</u>	<u>Deadline</u>
Carriers' Initial filings with 12 months of data and supporting documents	August 1, 2007
Commission Staff's Final Memorandum	September 8, 2007
Carriers' Responses to Staff's Final Memorandum	September 18, 2007

The Commission also directed that the carriers' verified statements be posted on the Commission's website at <http://www.psc.state.wv.us>; directed that notice of its Order and the internet posting of carriers' verified statements be published once in the *Charleston Gazette* and *Charleston Daily Mail*; and invited interested persons to file comments with the Commission by August 16, 2007.

The Commission's Consumer Advocate Division (CAD) filed a petition to intervene on July 30, 2007.

In accordance with the August 1, 2007 filing deadline, the following ETCs filed their respective documentation and requests that the Commission certify to the FCC and the USAC their eligibility to continue to receive federal high-cost support in calendar year 2008:

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. Easterbrooke Cellular Corporation
7. FiberNet, LLC
8. Gateway Telecom, LLC, dba StratusWave Communications, LLC

9. Hardy Telecommunications, Inc. CLEC
10. Hardy Telecommunications, Inc. ILEC
11. Highland Cellular, LLC
12. Sprint Nextel Corporation
13. Spruce Knob-Seneca Rocks Telephone, Inc.
14. Verizon West Virginia Inc.
15. War Telecommunications
16. West Side Telecommunications
17. West Virginia PCS Alliance, LC dba NTELOS

CAD filed a motion on August 3, 2007, requesting that the ETCs file, in the current GI, copies of their annual lifeline verification compliance certifications referenced in FCC Public Notice DA 07-3088. Commission Staff (Staff) filed a memorandum on August 28, 2007, stating that it did not object to the filing of the Lifeline verification compliance certifications in the present case. No other party filed a response to CAD's motion.

On August 30, 2007, the Commission entered an order requiring that the ETCs file a copy of their annual Lifeline verification compliance certifications in the present case. In light of the new filing, the Commission modified the remaining procedural deadlines in this case as follows:

Staff's Final Memorandum

September 10, 2007

All ETC Responses to Staff's Final Memorandum

September 20, 2007

On September 10, 2007, Staff filed its "Final Joint Staff Memorandum." Staff filed a "Further Final Joint Staff Memorandum" on September 21, 2007. Staff recommended the Commission timely certify to the FCC that the 17 ETC telecommunications utilities filing in the instant proceeding are adequately in compliance with all applicable ETC/USF requirements in the current reporting period. Staff noted in its filings that Armstrong Telephone Company - Northern District and Armstrong Telephone Company - West Virginia failed to file a copy of their annual Lifeline verification compliance certifications in the present case. Staff stated that, in its opinion, failure to do so did not necessitate, at this time, a denial of certification as a qualified ETC for the Universal Service Fund.

DISCUSSION

CAD Request to Intervene

CAD has a legal interest in the current proceeding. The Commission shall herein grant the CAD's request to intervene.

Use of High-Cost Support Certification - All Carriers

With regard to the use of USFs, the Commission finds and concludes that the following telecommunications carriers should be certified to receive Federal Universal Service support during January 1, 2008 to December 31, 2008, as they use federal universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1934 (as amended):

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. Easterbrooke Cellular Corporation
7. FiberNet, LLC
8. Gateway Telecom, LLC, dba StratusWave Communications, LLC
9. Hardy Telecommunications, Inc. CLEC
10. Hardy Telecommunications, Inc. ILEC
11. Highland Cellular, LLC
12. Sprint Nextel Corporation
13. Spruce Knob-Seneca Rocks Telephone, Inc.
14. Verizon West Virginia Inc.
15. War Telecommunications
16. West Side Telecommunications
17. West Virginia PCS Alliance, LC dba NTELOS

Rate Comparability Certification - Non-rural ILEC Service Areas

The Commission concludes that the rates charged by the incumbent non-rural carrier, Verizon WV, to residential customers in rural areas of West Virginia are comparable to rates charged in urban areas for purposes of 47 U.S.C. § 254(e). Three of the four residential calling plans available to all Verizon WV customers in West Virginia, including those in rural areas, have basic rates which fall below the national urban benchmark of \$34.83 per month set forth in the FCC's *Reference Book on Rates, Price Indices and Expenditures for Telephone Service*, (September 26, 2007). The fourth calling plan, Frequent Caller, has basic rates that are above the benchmark. Nevertheless, the Commission believes that all of Verizon WV's rates in rural areas are reasonably comparable to rates charged in urban areas for the following reasons:

1. Since 1988 the rates charged to residential customers in West Virginia have been uniform throughout the state, that is, they do not vary based on whether the customer is located in an urban wire center or a rural wire center.

2. "Local calling areas" are uniformly defined throughout West Virginia and consist of all adjacent wire centers and wire centers within 22 air miles of the customer's home wire center. This means that every residential customer in every Verizon WV wire center in West Virginia, rural or urban, has a large local calling area, usually in excess of fifty miles in diameter. These large local calling areas benefit residential customers by reducing the need to make long distance calls for normal daily activities.
3. Every residential customer in every Verizon WV wire center has the choice of the same four calling plans. Unlike rate plans in other states, residential customers in rural areas are not forced to subscribe to service under only one rate plan. Since the rate plans are optional, no customer is forced to purchase service under any particular plan. Each customer can choose which plan is best for his or her calling needs.
4. Accordingly, Plan 4 is an optional calling plan that provides flat-rate local calling across a very large area. Customers do not have to choose that plan, since there are other alternative calling plans available from Verizon WV and competitive carriers. Moreover, Plan 4 gives customers flat-rate local calling for calls that are normally billed as long distance calls in other, more urban states.

Additional Rate Comparability Certification - Competitive ETCs

The Commission also reviewed the comparability of the residential rates of the following competitive ETCs charged in rural areas of West Virginia served by Verizon WV and determined that they are reasonably comparable to rates charged in urban areas:

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Easterbrooke Cellular Corporation
4. FiberNet, LLC
5. Gateway Telecom, LLC, dba StratusWave Communications
6. Highland Cellular, LLC
7. Sprint Nextel Corporation
8. West Virginia PCS Alliance, LC dba NTELOS

Most of these carriers offer residential rates to customers in rural wire centers served by Verizon WV that fall below the national urban benchmark of \$34.83 per month. To the extent that some of these CETCs offer basic calling plans with rates that are above the national urban benchmark, the Commission believes that plans are nevertheless comparable to urban rates nationwide because these plans include calling features that are not federally supported, such as long distance calling and vertical services, in addition to the existence of uniform residential rates, uniformly defined "local calling areas" in West Virginia, and the

existence of competitive carriers offering alternative calling plans. The Commission will continue to closely monitor CETCs which offer basic calling plans with rates above the national urban benchmark.

In future years, the Commission would be assisted by the Staff analyzing the CETCs' comparison of their residential wire rates in rural areas to urban rates nationwide. Staff should insure that the rates being used by all CETCs for comparison purposes include the same rates and fees.

Certification Conclusion

Pursuant to Section 254(e) of the Telecommunications Act of 1934 (as amended), the Commission finds and concludes that it should certify by letter to the FCC and the USAC that all federal high-cost support will be used by the above-listed ETCs only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act. Such letter shall be issued and received by the FCC on or before Friday, September 28, 2007.

Annual Lifeline Verification Certifications

On July 10, 2007, the FCC issued Public Notice DA 07-3088, "Deadline for Annual Lifeline Verification Surveys," requiring ETCs in a state with its own state-based Low-income program to "submit a certification, signed by an officer of the company to USAC by August 31, 2007, and on August 31 of each subsequent year thereafter, attesting that the ETC has complied with the state verification procedures." Pursuant to the FCC's notice, each state with a state-based Low-income program is required to establish state-specific verification procedures. The state procedures should include how ETCs verify continued eligibility and to whom the results should be submitted.

West Virginia Code § 24-2C-4(d) sets forth this state's procedures for its state-based low-income program called "Tel-Assistance." The West Virginia Department of Health and Human Resources (DHHR) is the agency that verifies initial and continuing eligibility of Tel-Assistance recipients. ETCs are responsible for communicating with DHHR and verifying the continuing eligibility. The Commission is the state agency to which information concerning the verification of eligibility of participants in low-income discount programs should be submitted.

The Commission ordered, on August 30, 2007, that all ETCs submit, in the present case, a copy of the annual lifeline verification certification. All ETCs, except Armstrong Telephone Company - Northern Division and Armstrong Telephone Company - West Virginia, filed such a certification. The FCC's public notice directed the state to establish a format in which the forms are filed. The Commission will work with DHHR to develop a format to be used by the ETCs when filing the annual lifeline verification certification in subsequent years.

Requests for Protective Treatment

Six of the filers requested protective treatment of certain aspects of the respective filings. Specifically:

Alltel Communications, Inc.

- 5-year Service Improvement Plan
- Universal Service Support and Expenditures in the Annual Report
- Description of 2006 Improvements and Upgrades in the Annual Report
- 2006 True-up Documents

American Cellular Corporation

- Signal Coverage and Cell Site Location Maps
- 5-year Service Improvement Plan
- Report of Service Outages from November 14, 2006 to December 31, 2006

Easterbrooke Cellular Corporation

- Portions of 5-year Construction Plan and Use of Support discussed in the certification including capital expenditures and network improvements
- Signal Coverage and Cell Site Location Map
- 5-year Site Build Plan Progress Report
- Service Outage Report

Highland Cellular, LLC

- Signal Coverage and Cell Site Location Maps
- Revised Service Improvement Plan and Progress Report
- Report of Service Outages for the Calendar Year 2006
- Report of Unfilled Request for Service for the 2006 Calendar Year
- Build-out Plan information, including the discussion of specific sites and expenses

Sprint Nextel Corporation

- 2006 Network Expenditure Information
- 5-year Service Improvement Plan
- Outage Report

Verizon West Virginia Inc.

- Outage Report
- Wire-center Specific Construction and Network Information
- Customer Usage Data

The majority of the filings in this case did not request protected treatment. Others asked for protected treatment of some portions of their filing.

As it is possible to issue this Order and the corresponding certification letter without including any of the proprietary information, the Commission concludes that there is no need to rule upon the requests for protected treatment at this time. The Commission shall direct its Executive Secretary to maintain such information separate and apart from the rest of the file. Should there be a request filed with the Commission in the future to make such information public, the Commission shall require the entity seeking protective treatment to argue its request for protective treatment at that time.

Requirements for Next Year's Certification Filings

In the September 26, 2006 Order in Case No. 06-0953-T-GI, the Commission directed all eligible telecommunications carriers to file certain information with the Commission on or before August 1, 2007, in order to assure that the Commission would have the necessary information available for its certification letter to the FCC. The Commission shall similarly require such filings be made on or before August 1, 2008.

In addition, the Commission places all CETCs on notice that the failure to have at least one basic plan with total costs below the national urban benchmark may jeopardize future certifications of that CETC.

The filing carriers are also directed to list all mandatory surcharges that apply to the listed basic calling plan, as well as the Federal Universal Service Charge that would apply to that plan, to facilitate comparison to the national urban benchmark.

Finally, the filers shall submit, as part of their certification filing, their Study Area Code(s), whether the filer is a Rural Carrier and/or a Non-Rural Carrier, and whether the filer is an Incumbent or a Competitive Carrier.

FINDINGS OF FACT

1. On July 26, 2007, pursuant to *West Virginia Code* § 24-1-1(f)(2) and Rule 6.3. of the *Rules of Practice and Procedure*, the Commission initiated this general investigation regarding the certification of federal universal service funding for eligible telecommunications carriers (ETCs) in West Virginia, for calendar year 2008.

2. In accordance with the August 1, 2007 filing deadline, the ETCs filed their respective documentation and requests that the Commission certify to the FCC and the USAC their eligibility to continue to receive federal high-cost support in calendar year 2008. Six of the filers requested protective treatment.

3. On August 30, 2007, the Commission ordered all ETCs to file, in the present case, a copy of the annual lifeline verification compliance certification referenced in FCC Public Notice DA 07-3088.

4. On September 10, 2007, Staff filed its "Final Joint Staff Memorandum" and on September 21, 2007, Staff filed a "Further Final Joint Staff Memorandum." Staff recommended the Commission timely certify to the FCC that the 17 ETCs filing in the instant proceeding are adequately in compliance with all applicable ETC/USF requirements in the current reporting period. Staff noted that Armstrong Telephone Company - Northern Division and Armstrong Telephone Company - West Virginia did not file a copy of their annual lifeline verification compliance certification with the Commission.

CONCLUSIONS OF LAW

1. It is reasonable to grant the CAD's request to intervene.

2. With regard to the use of USFs, the Commission finds and concludes that the following telecommunications carriers should be certified to receive Federal Universal Service support during January 1, 2008 to December 31, 2008, as they use federal universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1934 (as amended):

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. Easterbrooke Cellular Corporation
7. FiberNet, LLC
8. Gateway Telecom, LLC, dba StratusWave Communications, LLC
9. Hardy Telecommunications, Inc. CLEC
10. Hardy Telecommunications, Inc. ILEC
11. Highland Cellular, LLC
12. Sprint Nextel Corporation
13. Spruce Knob-Seneca Rocks Telephone, Inc.
14. Verizon West Virginia Inc.
15. War Telecommunications
16. West Side Telecommunications
17. West Virginia PCS Alliance, LC dba NTELOS

3. The Commission concludes that the rates charged by the incumbent non-rural carrier, Verizon WV, to residential customers in rural areas of West Virginia are comparable to rates charged in urban areas nationwide for purposes of 47 U.S.C. § 254(e).

4. The Commission concludes that the rates of the following competitive ETCs charged in rural areas of West Virginia served by Verizon WV are reasonably comparable to rates charged in urban areas nationwide:

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Easterbrooke Cellular Corporation
4. FiberNet, LLC
5. Gateway Telecom, LLC, dba StratusWave Communications
6. Highland Cellular, LLC
7. Sprint Nextel Corporation
8. West Virginia PCS Alliance, LC dba NTELOS

To the extent that one or more of these CETCs offer basic calling plans with rates that are above the national urban benchmark, the Commission concludes that plans are nevertheless comparable to urban rates nationwide because these plans include calling features that are not federally supported, such as long distance calling and vertical services, in addition to the existence of uniform residential rates, uniformly defined "local calling areas" in West Virginia, and the existence of competitive carriers offering alternative calling plans. The Commission will continue to closely monitor CETCs which offer basic calling plans with rates above the national urban benchmark.

5. Pursuant to Section 254(e) of the Telecommunications Act of 1934 (as amended), the Commission finds and concludes that it should certify by letter to the FCC that all federal high-cost support will be used by the above-listed ETCs only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act.

6. It is reasonable to require Armstrong Telephone Company - Northern Division and Armstrong Telephone Company - West Virginia to file a copy of their annual lifeline verification compliance certification with the Commission.

7. The Commission concludes that there is no need to rule upon the requests for protected treatment at this time.

8. In order to facilitate next year's certification filings, it is reasonable for the Commission to mandate specific filing requirements within this Order.

ORDER

IT IS THEREFORE ORDERED that a certification be issued to the Federal Communications Commission and the Universal Service Administrative Company stating that the following carriers are using Federal Universal Service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1934 (as amended):

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. Easterbrooke Cellular Corporation
7. FiberNet, LLC
8. Gateway Telecom, LLC, dba StratusWave Communications, LLC
9. Hardy Telecommunications, Inc. CLEC
10. Hardy Telecommunications, Inc. ILEC
11. Highland Cellular, LLC
12. Sprint Nextel Corporation
13. Spruce Knob-Seneca Rocks Telephone, Inc.
14. Verizon West Virginia Inc.
15. War Telecommunications
16. West Side Telecommunications
17. West Virginia PCS Alliance, LC dba NTELOS

IT IS FURTHER ORDERED that it is appropriate to certify to the Federal Communications Commission and the Universal Service Administrative Company that the above-stated carriers are eligible to continue receiving Federal Universal Service support for calendar year 2008, based on the verified statements submitted to the Commission.

IT IS FURTHER ORDERED that it is appropriate to certify to the Federal Communications Commission and the Universal Service Administrative Company that the residential rates charged by the following competitive eligible telecommunications carriers in rural areas of West Virginia served by Verizon WV are reasonably comparable to urban rates nationwide:

1. Alltel Communications, Inc.
2. American Cellular Corporation
3. Easterbrooke Cellular Corporation
4. FiberNet, LLC
5. Gateway Telecom, LLC, dba StratusWave Communications
6. Highland Cellular, LLC
7. Sprint Nextel Corporation
8. West Virginia PCS Alliance, LC dba NTELOS

IT IS FURTHER ORDERED that by August 1, 2008, regardless of whether the Commission has yet instituted the 2009 annual certification proceeding, all eligible telecommunications carriers providing service in areas served by a non-rural incumbent local exchange carrier shall file, for the purposes of making the rate comparability determination, the following information:

- (1) Monthly line charge
- (2) Average monthly usage
- (3) Any federal subscriber line charge
- (4) Any federal universal service credit
- (5) Any federal universal service surcharge
- (6) Any local number portability surcharge
- (7) Any telecommunications relay service surcharge
- (8) Any E-911 surcharge
- (9) Federal excise tax

IT IS FURTHER ORDERED that on or before August 1, 2008, regardless of whether the Commission has yet instituted the 2009 annual certification proceeding, all eligible telecommunications carriers designated by this Commission shall, in addition to the information detailed above for the then most recent calendar year, also file:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received during the most recent calendar year, and how the support was used during that period to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;
- (2) for the most recent calendar year, detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the most recent calendar year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) the number of complaints per 1,000 handsets or lines during the most recent calendar year;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the Commission's quality of service standards, and the CTIA Consumer Code for Wireless Service;

- (6) certification that the ETC is able to function in emergency situations;
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

IT IS FURTHER ORDERED that the filing carriers are hereby directed to list all mandatory surcharges that apply to their listed basic calling plan, as well as the Federal Universal Service Charge that would apply to that plan, to facilitate comparison to the national urban benchmark.

IT IS FURTHER ORDERED that the filing carriers shall submit, as part of their certification filing, their Study Area Code(s), whether the filer is a Rural Carrier and/or a Non-Rural Carrier, and whether the filer is an Incumbent or a Competitive Carrier.

IT IS FURTHER ORDERED that on or before August 31, 2008, all eligible telecommunications carriers designated by this Commission shall file a copy of the annual lifeline verification compliance certification referenced in FCC Public Notice DA 07-3088 and above.

IT IS FURTHER ORDERED that Armstrong Telephone Company - Northern District and Armstrong Telephone Company - West Virginia are hereby ordered to file a copy of the 2007 annual lifeline verification compliance certification in the present case within ten days of the date of this order.

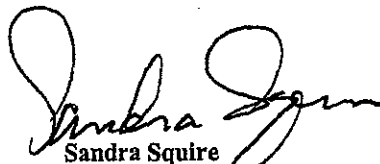
IT IS FURTHER ORDERED that the CAD's petition to intervene is hereby granted.

IT IS FURTHER ORDERED that the Executive Secretary shall docket in this proceeding a copy of the Commission's letter to the FCC issued pursuant to this order.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

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